IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13712 of 2022

Md Asif M Amin Shaikh son of Md. Amin Shaikh, resident of Room No. 107, 1st Floor, Building No. 1/A, Pankhe Shah Baba Sra Chs, L.B.S. Marg, Near Damodar Park, Ghatkopar, Mumbai, 400086 (Maharashtra)

...Appellant ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Commissioner, Government of Bihar, Patna.
3. The Deputy Collector, Land Reforms, Manjhaul, Begusarai.
4. The Superintendent of Police, Begusarai.
5. The Superintendent Excise Prohibition, Begusarai.
6. The District Transport Officer, Begusarai.
7. The Incharge Office, District Legal Cell, Begusarai.
8. The S.H.O., Police Station, Khodawandpur, District- Begusarai.

... Repondents ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Md. Shamimul Hoda, Advocate

For the Respondent/s : Mr.Kumar Manish (SC 5)

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 23-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

(i) For quashing/set aside the order dated 16.06.2022 of the Additional Chief Secretary, Government of Bihar, by which he has been pleased to reject the Excise Revision No.152 of 2022 and he has further directed the D.C.L.R. Manjhaul, Begusarai to proceed with auction in the confiscation proceeding as per the Act. The Additional Chief Secretary has further confirmed the order passed by the learned D.C.L.R., Manjhaul, Begusarai and the learned Excise Commissioner for confiscation of vehicle.

(ii) For direction/directions to the respondents to release the vehicle Tata Container bearing Registration No. MH03CV-4138, Chassis No.MAT508216K7H16554, Engine No.49TC41HPY4827217, in favour of the petitioner.

(iii) For further quashing/set aside the order dated 29.01.2022 passed by the D.C.L.R. Manjhaul, district-Begusarai passed in Confiscation Case No.29/2021/22 against the petitioner by which he has been pleased to reject the show cause filed by the petitioner and directed to confiscate the vehicle of the petitioner and further quash/set aside its consequential excise Appeal No. 166/2022 vide order dated 18.04.2022 confirmed the said order of D.C.L.R., Begusarai and finally both order have been confirmed in Excise Revision Case No. 152/2022 vdie order dated 16.06.2022.

(iv) For during the pendency of this writ application action in the confiscation proceeding against the petitioner's vehicle may be pleased to remain stayed.

(v) For any other relief/reliefs to which the petitioner is entitled under the law.

Briefly stated the facts of the case is that informant is officer-in-charge of Khodawndpur Police Station and was on duty on 12.07.2021 when he received a confidential information at about 1:40 in the night that FIR named accused are distributing illicit liquor brought in a container and pickup van and both are parked there and from container, illicit foreign liquor is being loaded in the pickup van and after receiving said information, he informed the higher authorities and proceeded along with other police personnel and as they reached said place, seeing the police, five persons assembled there fled away and from the container 2,065.302 litre and from the bolero pickup van, 352 litre illicit foreign liquor were recovered and seized giving rise to Khodawndpur P.S. Case No.150/ 20212 dated 12.07.2021 under Sections 414, 465, 477 of IPC and 30(a) and 41(1) of Bihar Prohibition and Excise Act, 2016.

On recommendation made by the police, confiscation proceeding was initiated against the vehicle, owned by petitioner being Confiscation Case No.29/2021-22 and show cause notice was issued to him and he filed his show cause stating therein that without his permission and knowledge, driver indulged in the transportation of illicit liquor and it is stated that the driver proceeded from Mumbai to Guwahati after loading sanitary items on 26.06.2021 and fine was imposed for overloading in Maharashtra border and at Gopalganj border on 2.7.2021 and after unloading the goods at Guwahati directed his driver to wait for loading of goods directly to Maharashtra or nearby States. However, driver of the vehicle loaded illicit liquor on his vehicle and entered Bihar and illicit liquor was recovered from the vehicle, however, he had no knowledge about it and same was done at the behest of driver.

As per Section 56 of the Excise Act, whenever an offence punishable under this Act is committed, the Collector or an officer authorized by him may confiscate such items on the report of investigating officer, which includes vehicle. Section 56 reads as follows:-

> "56. Confiscation of seized items.-(1) Notwithstanding anything contained in section -57B, whenever an offence punishable under this Act, is committed, the Collector or an officer authorized by him may confiscate such items based on the report of the investigating officer.
>
> (2) Such items may include-
>
> (i) x x x
>
> (ii) any animal, vehicle, vessel or conveyance;
>
> (iii) any liquor or intoxicant;
>
> (iv) x x x x

Under Section 32 of the Excise Act, there is presumption as to commission of offence under the Excise Act against the accused and the owner of the vehicle needs to account satisfactorily with respect to illicit liquor kept in the vehicle and in absence of satisfactory explanation, the presumption that accused persons committed the offence shall arise unless proved otherwise. Section 32 reads as under:-

> "32. Presumption as to commission of offence in certain cases.-
>
> (1) x x x
>
> (2) x x x
>
> (3) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise."

In present case, the owner of the vehicle has admitted that illicit liquor was loaded in his vehicle by the driver, as such, there is presumption that offence under the Excise Act has been committed and the vehicle becomes liable for confiscation.

Under such circumstances, onus was on the owner of the vehicle that the illicit liquor was loaded on his vehicle without his connivance, consent or knowledge and he took all reasonable care and precautions and said offence was committed without his knowledge or connivance.

In present case, there is nothing on record that owner of the vehicle produced sufficient materials in support of his contention to the satisfaction of confiscating authority that he had no knowledge or there was any connivance on his part and he had taken all reasonable precautions against such use of vehicle for transporting the illicit liquor.

There has been recovery of huge quantity of illicit liquor from the vehicle and from FIR also, it is apparent that police had prior information of name of accused, who were indulged in trade of illicit liquor and for which, vehicle of the petitioner was used.

Under such circumstances, this Court does not find any error or infirmity in the order passed by the confiscating authorities requiring any interference by this Court in its discretionary writ jurisdiction, accordingly, this writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2022
Transmission Date	NA